

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

ALLISHA K TAYLOR and  
YAMAN F TAYLOR,

Plaintiffs,

V.

NATIONSTAR MORTGAGE LLC,

Defendant.

CIVIL ACTION FILE  
NO. 1:15-cv-04403-AT-LTW

**[PROPOSED] ORDER**

This Court previously stayed this action pending a decision from the D.C. Circuit Court of Appeals that was expected to clarify issues involving the interpretation of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, that were pertinent to the issues to be litigated in this case. [Doc. 53].

On March 16, 2018, the D.C. Circuit issued its decision in *ACA International* v. FCC<sup>1</sup> and set aside the FCC’s attempt to clarify the statutory definition of the types of calling equipment that fall within the TCPA’s restrictions. Finding certain aspects of the FCC’s 2015 Declaratory Ruling regarding the TCPA to be unreasonable or arbitrary and capricious (including aspects of the 2015 Declaratory

<sup>1</sup> 885 F.3d 687 (2018).

Ruling that are relevant to this case), the D.C. Circuit did not interpose its own interpretations of the TCPA, but instead left it up to the FCC to issue a new Declaratory Ruling. Responding to the D.C. Circuit's ruling, the FCC issued a Public Notice seeking comment on the issues raised as a result of the *ACA International* decision regarding the interpretation of the Telephone Consumer Protection Act.<sup>2</sup>

“Courts are divided on the current definition of an ATDS [automatic telephone dialing system] in the wake of *ACA International*.”<sup>3</sup> Some courts have concluded that all of the FCC's rulings regarding the definition of an ATDS were vacated by *ACA International* and have interpreted what constitutes an ATDS in

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<sup>2</sup> Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit's *ACA Int'l* Decision, DA 18-493, May 14, 2018.

<sup>3</sup> *Sessions v. Barclays Bank Del.*, No. 1:17-CV-01600-LMM, 2018 WL 3134439, at \*3 (N.D. Ga. June 25, 2018).

light of the statutory language alone.<sup>4</sup> Others have held that the FCC’s rulings prior to the 2015 Declaratory Ruling addressed in *ACA International* remain valid.<sup>5</sup>

Given that courts are divided on the current definition of an ATDS, that the FCC promptly began the process of formulating and issuing a new Declaratory Ruling, and the deadlines for comments and reply comments to be filed with the FCC have already passed, the Court sees wisdom in continuing the present stay in this case to allow the FCC a reasonable amount of time to issue a new Declaratory Ruling in the wake of the *ACA International* decision.

The Court notes that “[w]hen a district court exercises its discretion to stay a case pending the resolution of related proceedings in another forum, the district court

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<sup>4</sup> See *id.* at \*4–5 (relying on statutory language alone to determine whether a system qualifies as an ATDS).

<sup>5</sup> See *Maddox v. CBE Group, Inc.*, NO. 1:17-CV-1909-SCJ, 2018 WL 2327037, at \*4 (N.D. Ga. May 22, 2018) (“Given the ACA Int’l decision, the Court relies on the FCC’s 2003 interpretation of § 227(a)(1) to determine if Defendant’s system qualifies as an ATDS.”).

must limit properly the scope of the stay.”<sup>6</sup> “A stay must not be ‘immoderate.’”<sup>7</sup> And the Eleventh Circuit has held that a stay that remains in effect until proceedings in another forum are concluded is immoderate.<sup>8</sup>

The Court hereby continues the stay that is presently in effect until the date that is nine months from the date of the entry of this Order or 30 days after the FCC issues a declaratory ruling in CG Docket Nos. 18-152 & 02-278 addressing the topics designated in the FCC’s Public Notice DA 18-493 issued on May 14, 2018, whichever occurs first.

**SO ORDERED**, this \_\_\_\_ day of \_\_\_\_\_, 2018.

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Assigned to: Judge Amy Totenberg  
Referred to: Magistrate Judge Linda T. Walker

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<sup>6</sup> *Ortega Trujillo v. Conover & Co. Commc’ns, Inc.*, 221 F.3d 1262, 1264 (11th Cir. 2000).

<sup>7</sup> *Id.*

<sup>8</sup> *See id.* (holding stay that “remain[ed] in effect until the ‘Bahamian Courts conclude their review’” was indefinite in scope and, thus, immoderate).

Prepared and presented by:

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**CERTIFICATE OF SERVICE, FONT AND MARGINS**

I hereby certify that on the undersigned date, I electronically filed the foregoing ***[PROPOSED] ORDER*** with the Clerk of the Court using the CM/ECF System and served a true and correct copy of same on the following individuals via First-Class Mail, postage prepaid, addressed to:

Yaman Taylor and Allisha Taylor  
7515 Garnet Drive  
Jonesboro, Georgia 30236

I further certify that I prepared this document in 14 point Times New Roman font and complied with the margin and type requirements of this Court.

This 27 day of July, 2018.

/s/ Allison G. Rhadans

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